

REMARKS/ARGUMENT

Applicants respectfully traverse the restriction requirement set forth in the Office communication dated September 1, 2009. The MPEP clearly and unequivocally states that there are two criteria which **MUST** be met for a requirement for restriction to be proper: (1) the inventions must be independent or distinct as claimed; **AND (2) there must be a serious burden on the examiner if restriction is not required (MPEP § 803).** MPEP § 803 specifically states:

If the search and examination of all the claims in an application can be made without serious burden, the **examiner must examine them on the merits, even though they include claims to independent or distinct inventions.**

In the Office Action dated June 28, 2005, Examiner fully examined Claims 1-54. Examiner set forth the following determinations:

Claims 7, 19, 31, 34, 45 and 53-54 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 5-7, 28-29, 32-33 and 43-45 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4 8-12, 25-26 and 35-39 were allowed.

Claims 5-6, 28-29, 32-33 and 43-44 were deemed to be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, rejection.

Applicants amended objected to claims 2-3, 13-18, 20-24, 27, 30, 40-42 and 46-52 in conformance with Examiner's recommendation, and amended Claim 51 as suggested by Examiner in an AMENDMENT – 37 C.F.R. § 1.111 on December 22, 2005. Claims 1, 4, 8-

12, 25-26 and 35-39 were previously allowed and objected to Claims 2-3, 13-18, 20-24, 27, 30, 40-42 and 46-52 should have been allowed in response to this amendment.

In a second Office Action dated March 13, 2006, Examiner again fully examined Claims 1-54. Examiner set forth the following determinations:

Claims 1-25, 28-29, 41, 43-45 and 51 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 26, 28, 35-39 and 52-54 were allowed.

Claims 1-25, 29, 41, 43-45 and 51 were deemed to be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, rejection.

Claims 2-3, 5-7, 13-24, 27, 30-34 and 40-51 were deemed to be allowable if rewritten or amended to overcome the objections set forth in the Office action.

Applicants: 1) amended objected to claims 2-3, 5-7, 13-24, 27, 30-34 and 40-51 in conformance with Examiner's recommendation; and 2) amended objected to claims 1-25, 28-29, 41, 43-45 and 51 to included the limitations of the base claim and any intervening claims, as suggested by Examiner in an AMENDMENT – 37 C.F.R. § 1.111 on August 9, 2006. Claims 26, 28, 35-39 and 52-54 were previously allowed and objected to Claims 1-25, 27, 29, 30-34 and 40-51 should have been allowed in response to this amendment.

In a third Office Action dated December 12, 2006, Examiner again fully examined Claims 1-54. Examiner set forth the following determinations:

Claims 7, 19, 34 and 45 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1-6, 8-18, 20-24, 26-31, 35-44 and 50-54 were allowed.

Claims 32-33 and 46-49 were deemed to be allowable if rewritten or amended to overcome the objections set forth in the Office action.

Claim 25 was rejected under 35 U.S.C. 102(e) as being anticipated by Huang et al. US Patent No. 6,154,443.

Applicants: 1) amended objected to claims 32-33 and 46-49 in conformance with Examiner's recommendation; and 2) traversed the 35 U.S.C. 102(e) rejection of Claim 25 in an AMENDMENT – 37 C.F.R. § 1.111 on August 8, 2007 (and again in a SUBSTITUTE AMENDMENT – 37 C.F.R. § 1.111 on March 13, 2008). Claims 1-6, 8-18, 20-24, 26-31, 35-44 and 50-54 were previously allowed and objected to Claims 32-33 and 46-49 should have been allowed in response to this amendment.

In a fourth Office Action dated June 17, 2008, Examiner again fully examined Claims 1-6, 8-18, 20-33, 35-44 and 46-54. Examiner set forth the following determinations:

Claims 43-44 and 53-54 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6, 8-18, 20-22, 24-33, 35-42 and 46-52 were allowed.

Claim 23 was deemed to be allowable if rewritten or amended to overcome the objections set forth in the Office action.

Applicants: 1) amended objected to claim 22 in conformance with Examiner's recommendation; and 2) amended objected to claims 43, 44 and 53-54 to include the limitations of the base claim and any intervening claims, as suggested by Examiner, in an AMENDMENT – 37 C.F.R. § 1.111 on November 12, 2008. Claims 1-6, 8-18, 20-22, 24-33, 35-42 and 46-52 were previously allowed and objected to Claims 22, 43, 44, 53 and 54 should have been allowed in response to this amendment.

In a fifth Office Action dated February 24, 2009, Examiner again fully examined Claims 1-6, 8-18, 20-33, 35-44 and 46-54. Examiner set forth the following determinations:

Claims 31 and 53-54 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 26-30, 35-39, 51 and 52 were allowed.

Claims 43-44 and 53-54 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6, 8-18, 20-25 and 54 were rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention.

Claim 25 was rejected under 35 U.S.C. 102(e) as being anticipated by Vadgame US Patent No.7,149,200.

Claims 32-33, 40-44 and 46-50 were deemed to be allowable if rewritten or amended to overcome the objections set forth in the Office action.

Applicants: 1) amended objected to claims 25, 32, 33 and 40 in conformance with Examiner's recommendation; 2) amended objected to claims 31, 53 and 54 to overcome the 35 U.S.C. 112, first paragraph, rejection; 3) amended claims 1, 13, 25 and 54 to overcome the 35 U.S.C. 101 rejections; and 4) traversed the 35 U.S.C. 102(e) rejection of Claim 25 in an AMENDMENT – 37 C.F.R. § 1.111 on May 29, 2009. Claims 26-30, 35-39, 51 and 52 were previously allowed and objected to Claims 25, 32, 33, 40-44 and 46-50, and rejected Claims 1-6, 8-18, 20-25, 31, 43, 44, 53 and 54 should have been allowed in response to this amendment.

In an Office communication dated September 1, 2009, more than four years after the first substantive examination, and after five successive Office actions, Examiner now issues a 2-way restriction requirement on Claims 1-6, 8-18, 20-33, 35-44 and 46-54.

Being that Claims 1-6, 8-18, 20-33, 35-44 and 46-54 have already been examined, at least 5 separate times by Applicants' count, Examiner cannot not meet the second requirement of MPEP § 803 - (2) **there must be a serious burden on the examiner if restriction is not required (MPEP § 803)**, since all the claims have already been examined multiple times! As such, Examiner's pending restriction determination regarding claims 1-6, 8-18, 20-33, 35-44 and 46-54 is improper and must be withdrawn.

Add to the above the fact that Examiner found each of the claims objected to and/or allowed multiple times over the five Office actions. Examiner now, however, argues that it would be a "burden" for him to examine all of Claims 1-6, 8-18, 20-33, 35-44 and 46-54 (Office communication dated September 1, 2009, page 4, line 19 – page 5, line 11). Surely Examiner's argument that it would be a "burden" for him to now examine Claims 1-6, 8-18, 20-33, 35-44 and 46-54, after examining the claims 5 times, is preposterous and must be withdrawn.

In the event Examiner make his restriction requirement final, Applicants will file forthwith a PETITION FROM REQUIREMENT FOR RESTRICTION - 37 CFR § 1.143 to have this improper restriction requirement withdrawn.

Pursuant to the requirement of 35 U.S.C. 121, Applicant hereby elects invention (I) (Claims 1-6, 8-18, 20-33, 35-44 and 46-52), with traverse, for the reasons set forth above.

For the reasons set forth above, Applicants respectfully request that the restriction of Claims 1-6, 8-18, 20-33, 35-44 and 46-54 be withdrawn.

Respectfully submitted,



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